

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 366 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KARADIA BHANABHAI KANABHAI PARMAR

Versus

ALI SHERJI PATNI

Appearance:

MR YOGESH S LAKHANI for Petitioner
NOTICE UNSERVED for Respondent No. 1
MRS SAROJ H RAICHURA for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/01/2000

ORAL JUDGEMENT

1. The appellant- original plaintiff, by way of this
Appeal From Order, has challenged the order dated
26.7.1990 passed below Ex.5 by the learned Civil

Judge(Senior Division) Veraval in Special Civil Suit No. 7 of 1990. In the application Ex. 5 under Order XXXIX R. 1 and 2, the appellant applied for ad-interim injunction restraining the defendant from disturbing the possession over survey no. 55 admeasuring 6 Acres 23 Gunthas, situated in village Mandor, Taluka Veraval. The learned trial judge, without granting ex-parte ad-interim injunction, issued notice to the respondents and after hearing the parties, by his impugned order, dismissed the application with costs. Along with the Appeal From Order, the appellant also filed Civil Application No. 2504 of 1990 for a direction to the parties to maintain status quo as to possession of the disputed land. It is not in dispute that this Court granted ad-interim relief directing the parties to maintain status quo as to possession of the middle portion admeasuring 2 Acres of survey no. 55 and that ad-interim relief still continues. When the matter is called out for hearing, Mr. Raichura, learned advocate appearing for the respondents is not present. Mr. T.M. Dagli, learned advocate for the appellant has stated that the suit pending in the trial court is fixed for recording of the evidence and is likely to be disposed of in near future. He has suggested that the order passed by this Court in the Civil Application directing parties to maintain status quo may be allowed to continue till the disposal of the suit.

2. Having gone through the reasonings of the learned trial judge, I am of the opinion that it would be futile to decide the disputed questions of fact involved in this Appeal From Order. Since the suit is already fixed for recording of evidence, the questions raised in this Appeal From Order shall be decided on the basis of the evidence that may be led by the parties in the suit. In view of the fact that the parties have maintained status quo for all these years and if they continue to maintain status quo as ordered by this Court, no prejudice is likely to be caused to any of the parties.

3. In this view of the matter, this Appeal From Order is disposed of without entering into the merits of the case with a direction to the parties to abide by the interim order passed by this Court in Civil Application No. 2504 of 1990 till the disposal of the suit. It goes without saying that whatever observations are made by the learned trial judge while passing the impugned order, will not come in the way of the appellant as they are tentative observations. This Appeal From Order is accordingly disposed of with no order as to costs.

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